

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 11-1501

In re: MICHAEL ROBERT KEARNS, a/k/a David Smith, a/k/a David
Williams, a/k/a The Colonel,

Petitioner.

On Petition for a Writ of Mandamus
(3:05-cr-00400-FDW-12)

Submitted: August 18, 2011

Decided: August 22, 2011

Before WILKINSON, DAVIS, and KEENAN, Circuit Judges.

Petition denied by unpublished per curiam opinion.

Michael Robert Kearns, Petitioner Pro Se.

Unpublished opinions are not binding precedent in this circuit.

PER CURIAM:

Michael Robert Kearns petitions for a writ of mandamus from this court. To the extent Kearns alleges that the district court has unduly delayed in ruling on his motion to vacate, our review indicates that the district court denied the motion on April 3, 2011. Therefore, we find there has been no undue delay in the district court.

To the extent Kearns seeks review of the merits of his motion to vacate, mandamus relief is a drastic remedy and should be used only in extraordinary circumstances. Kerr v. United States Dist. Court, 426 U.S. 394, 402 (1976); United States v. Moussaoui, 333 F.3d 509, 516-17 (4th Cir. 2003). Further, mandamus relief is available only when the petitioner has a clear right to the relief sought. In re First Fed. Sav. & Loan Ass'n, 860 F.2d 135, 138 (4th Cir. 1988). Mandamus may not be used as a substitute for appeal. In re Lockheed Martin Corp., 503 F.3d 351, 353 (4th Cir. 2007). The relief sought by Kearns is not available by way of mandamus.

Accordingly, we deny the mandamus petition. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not aid the decisional process.

PETITION DENIED